

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ABELARDO MORALEZ,

Case No. 13-12302

Plaintiff,

v.

Linda V. Parker
United States District Judge

CITY OF JACKSON POLICE
DEPARTMENT, *et al*,

Michael Hluchaniuk
United States Magistrate Judge

Defendants.

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REPORT AND RECOMMENDATION
DISMISSAL FOR FAILURE TO TIMELY EFFECTUATE SERVICE

I. PROCEDURAL HISTORY

Plaintiff filed this civil rights action on May 23, 2013. (Dkt. 1). This matter was referred to the undersigned for all pretrial purposes. (Dkt. 11). On November 21, 2013, the Court issued an Order to Show Cause why plaintiff had failed to serve the summons and complaint on the following defendants: City of Jackson Police Department, Rick Burkart, Chuck Brant, Kevin Hillar, Richard Cook, Sr., Paul Gross, Matt Peters, John Lilly, Thomas Tinklepaugh, Peter Postma, Steven Scarpino, Michael Galbreath, Matt Heins, Douglas Patterson, Patrick Patterson, Sr., Dennis Wayne Patterson, Dan Joe Wheeler, SSID Mental Disability, John Frye, Bob's Takeout/Lotto Ticket Sales, Julius J. Rim, International Metals and

Energy Technology, Ltd., Ronald Radawicz, Patrick Burtch, Tomas Pickett, Kim Vanevery, Andrew Dotterweich, Carlene Lefere, Bethany Smith, Andrew J. Wrozek, Jr., Joyce Draganchuck, Brian E. Thiede, Kevin M. Thomson, Victor Stanton, and Polish National Hall Alliance Group. (Dkt. 17). Plaintiff's deadline for filing a response to the Order to Cause was December 12, 2013. Additionally, the Order to Show Cause specifically warned plaintiff that "**[f]ailure to timely or adequately respond to this Order to Show Cause will result in a report and recommendation for dismissal of all the above-identified defendants.**" (Dkt. 17) (emphasis in original).

After the Order to Show Cause was issued, plaintiff filed certificates of service as to the following defendants: Elmer Hitt, Karen Coffman, Amanda Riska, Michael Overton, Dennis M. Diffendorfer, Douglas Patterson, Bob's Takeout/Lotto Ticket Sales, David Taylor, Polish National Hall Alliance Group, Kevin M. Thomson, Julius J. Rim, Patrick Patterson, Dennis Wayne Patterson, and Gilbert Carson. (Dkt. 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31). Otherwise, plaintiff has not provided any response to the Order to Show Cause. Thus, the following defendants have not been served and plaintiff has not offered any reasons for the failure to serve them: City of Jackson Police Department, Rick Burkart, Chuck Brant, Kiven Hillar, Richard Cook, Sr., Paul Gross, Matt Peters,

John Lilly, Thomas Tinklepaugh, Peter Postma, Steven Scarpino, Michael Galbreath, Matt Heins, Dan Joe Wheeler, SSID Mental Disability, John Frye, International Metals and Energy Technology, LTD, Ronald Radawicz, Patrick Burtch, Tomas Pickett, Kim Vanevery, Andrew Dotterweich, Carlene Lefere, Bethany Smith, Andrew J. Wrozkek, Jr., Joyce Draganchuck, Brian E. Theide, and Victor Stanton.

For the reasons set forth below, the undersigned **RECOMMENDS** that all of the unserved defendants be **DISMISSED** from this matter without prejudice.

II. ANALYSIS AND CONCLUSION

Federal Rule of Civil Procedure 4(m) provides that if service is not effectuated within 120 days, the Court must dismiss the action without prejudice as to that defendant. “Absent a showing of good cause to justify a failure to effect timely service, the Federal Rules of Civil Procedure compel dismissal.” *Byrd v. Stone*, 94 F.3d 217, 219 (6th Cir. 1996), citing *Habib v. General Motors Corp.*, 15 F.3d 72, 73 (6th Cir. 1994). It is plaintiff’s burden to establish good cause for failing to timely effect service. *Habib*, 15 F.3d at 73. Further, Local Rule 41.2 provides that if the parties have not taken action within a reasonable time, the Court may enter an order dismissing the case for lack of prosecution.

Plaintiff failed to serve the summons and complaint or respond to the Order

to Show Cause as to the above-identified defendants after being warned that failure to do so could result in dismissal. (Dkt. 17). Therefore, the undersigned recommends that plaintiff's complaint against the above-identified defendants be dismissed without prejudice pursuant to Rule 4(m) and Local Rule 41.2. *See Habib*, 15 F.3d at 73 ("Absent a showing of good cause to justify a failure to effect timely service, the Federal Rules of Civil Procedure compel dismissal.").

III. RECOMMENDATION

Based on the foregoing, the undersigned **RECOMMENDS** that plaintiff's complaint against unserved defendants City of Jackson Police Department, Rick Burkart, Chuck Brant, Kiven Hillar, Richard Cook, Sr., Paul Gross, Matt Peters, John Lilly, Thomas Tinklepaugh, Peter Postma, Steven Scarpino, Michael Galbreath, Matt Heins, Dan Joe Wheeler, SSID Mental Disability, John Frye, International Metals and Energy Technology, LTD, Ronald Radawicz, Patrick Burtch, Tomas Pickett, Kim Vanevery, Andrew Dotterweich, Carlene Lefere, Bethany Smith, Andrew J. Wrozkek, Jr., Joyce Draganchuck, Brian E. Theide, and Victor Stanton be **DISMISSED** without prejudice pursuant to Rule 4(m) and Local Rule 41.2.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within 14 days of service,

as provided for in Federal Rule of Civil Procedure 72(b)(2) and Local Rule 72.1(d). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1981). Filing objections that raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

Any objections must be labeled as “Objection No. 1,” “Objection No. 2,” etc. Any objection must recite precisely the provision of this Report and Recommendation to which it pertains. Not later than 14 days after service of an objection, the opposing party may file a concise response proportionate to the objections in length and complexity. Fed.R.Civ.P. 72(b)(2), Local Rule 72.1(d). The response must specifically address each issue raised in the objections, in the same order, and labeled as “Response to Objection No. 1,” “Response to Objection No. 2,” etc. If the Court determines that any objections are without merit, it may rule without awaiting the response.

Date: May 29, 2014

s/Michael Hluchaniuk
Michael Hluchaniuk
United States Magistrate Judge

CERTIFICATE OF SERVICE

I certify that on May 29, 2014, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send electronic notification to the following: Audrey J. Forbush, Shaina R. Reed, and I certify that I have mailed by United States Postal Service the foregoing pleading to the following non-ECF participant(s), at the following address(es): Abelardo Moralez, 729 Page Avenue, Jackson, MI 49203.

s/Tammy Hallwood
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